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CALIFORNIA

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August 8, 1970

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*Council Sub-Committee Report*

*Public relations - CA - Berkeley -  
Municipal Government*

To the Honorable Mayor and  
Members of the City Council

Subject: REPORT ON CITIZEN COMPLAINT PROCEDURE AND RELATED PROBLEMS

General Considerations

In 1968 a four member body of the City Council was added to the Council Committee structure for the purpose of formally augmenting the then existing citizen grievance mechanism. At the time it was created, the City Council understood and directed that the Committee's powers be limited to reviewing those citizen complaints referred to it, for the sole purpose of determining whether to recommend to the City Council that the Council create a new policy or modify an existing one.

The Committee was not empowered to act as a reviewing body with power to reverse, sustain, or order changes in the findings made by the City Manager or a Department Head, or in the disciplinary action taken or not taken with reference to a particular City employee.

The Charter of the City of Berkeley is the basic document which defines the powers, duties and responsibilities of the various City bodies and officers. It was adopted by a vote of the people of the City of Berkeley and may be amended only by a vote of people of the City of Berkeley. It may not be changed in any way by the City Council. Further, the members of the City Council are required by law to abide by and conduct themselves in accordance with its provisions just as are all the other citizens of Berkeley.

The Charter provides that the City Council shall have the power to determine the policies of the City, and that the City Manager, the chief administrative officer, shall have the duty and responsibility of carrying out those policies.

For example, the City Council may formally adopt a policy position by resolution or otherwise that "a Berkeley Police Officer may use Mace in the performance of his duties, but that certain procedures must be employed to minimize the possibility of permanent damage." Between the City Council and the City Manager, only the City Manager may enforce that policy position.

The Charter provides that the power of hiring, firing and disciplining City employees (except the City Manager) shall reside in the City Manager, and the Council is specifically prohibited from interfering in any way either directly or indirectly

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with the City Manager's exercise of that power. The Charter provision is Section 28. Powers and duties of City Manager, and reads as follows:

"The City Manager shall be responsible to the Council for the efficient administration of all the affairs of the City. He shall have the power, and it shall be his duty: .....

(b) Except as otherwise provided in this Charter, to appoint, discipline or remove all heads or directors of departments, chief officials, and all subordinate officers and employees of the City, subject to the Civil Service provisions of this Charter. Neither the Council nor any of its committees or members shall dictate or attempt to dictate, either directly or indirectly, the appointment of any person to office or employment by the City Manager or in any manner interfere with the City Manager or prevent him from exercising his own judgment in the appointment of officers and employees in the administrative service. Except for the purpose of inquiry, the Council and its members shall deal with the administrative service solely through the City Manager, and neither the Council nor any member thereof shall give orders to any of the subordinates of the City Manager, either publicly or privately.

(c) To exercise control over all departments, divisions and bureaus of the City Government and over all the appointive officers and employees thereof."

#### Complaint Procedure

Obviously, because of the nature of the policing function, most complaints of City employee misconduct are directed against members of the Berkeley Police Department. The existing City Council policy is that every complaint be adequately investigated, appropriate action taken and that the complainant be notified of the result of the investigation.

The Internal Affairs Bureau of the Police Department, under the overall direction of the Chief of Police, investigates complaints against policemen and prepares reports of those investigations for departmental review, and ultimate decision by the Chief of Police as to whether disciplinary action is warranted. The Chief has authority to impose discipline of up to three days' suspension without pay. Any discipline in excess of this may be imposed only by the City Manager.

There is provision in the Personnel Ordinance for appeal by a disciplined employee to the City Personnel Board from the disciplinary action taken. However, the Personnel Board action is only advisory to the City Manager. It has no power to reverse or modify the City Manager's decision. Traditionally, however, recommendations of the Personnel Board have been given great weight by the City Manager.

~~At any stage of the process after completion of the departmental review, the complainant may request the City Manager to reconsider the complaint.~~

This subcommittee has found that most of the complainants who come before it or the Council fall into one or the other following categories:





- (1) They do not trust the fairness of a Police Department investigation and determination of charges of police misconduct, and therefore do not want to go through that step at all, or
- (2) They have gone through that step and the City Manager review, and are dissatisfied with the findings made and the action taken. They want the City Council to have the ultimate power of employee discipline.

Under the existing City Charter, the City Council is prohibited from acting in the role of (2) above. The Council does have the power to create another city administrative unit with power of investigation and determination under the direction and control of, and answerable to, the City Manager. The Manager could then use the new agency for investigations rather than the Police Department.

In making the decision of whether to create the new city unit, the Council should consider the monetary expense, weighted against the probability of intangible benefits accruing to the City generally in the form of appreciably more citizen confidence in the fairness of the citizen complaint mechanism. It should be borne in mind that even if this were done, the City Manager would retain the ultimate city power of decision over each complaint of employee misconduct.

The legitimate powers available to the City Council to redress citizen grievances generally lie in:

- (1) its power to select and to discharge the City Manager, and
- (2) its power to allocate monies to the various departments through the budgetary process, and
- (3) its power to determine City policies, programs, projects and services by enactment of policy resolutions and ordinances, and
- (4) its powers of persuasion within the limitations imposed by the City Charter.

However, the legitimate power available to the Council to redress citizen grievances regarding employee misconduct lies only in (1) above.

This Committee believes that even with the above stated limitations, there is value in retaining it in the Council Committee structure. What its role is not should be clearly understood by all. The preceding should illustrate this.

#### General Recommendations

1. This Committee believes that it should still be empowered to review individual cases, after the City Manager's administrative process has been completed, to accomplish the following:

- (1) To recommend policy additions or modifications to the Council;

1. The first part of the report deals with the general situation of the country and the progress of the work during the year.
2. The second part deals with the results of the work done during the year.
3. The third part deals with the financial statement of the year.
4. The fourth part deals with the general remarks and conclusions.
5. The fifth part deals with the suggestions for the future.
6. The sixth part deals with the appendix.
7. The seventh part deals with the references.
8. The eighth part deals with the index.
9. The ninth part deals with the cover page.
10. The tenth part deals with the title page.



(2) To give recommendations to the Council (probably in personnel session) of its evaluation of the performance of the City Manager in properly carrying out his responsibilities in the area of citizen complaints of employee misconduct.

This Committee may perform its functions by, in its discretion:

- (1) reviewing staff reports;
- (2) reviewing the written charges;
- (3) both of the above and interviewing witnesses.

2. Those complainants who request review by this Committee should be required to state the policy or procedure which they wish to have adopted or amended before the request is acted upon by the Council. In deference to differing degrees of articulateness, this requirement should be liberally construed. The purpose of this recommendation is to make sure that the complainant clearly understands the limitations of the remedy afforded by this Committee; namely, that this Committee will not review the case as a specific appeal from the City Manager's factual determination and action with regard to the employee or the employee's involvement.

3. To minimize misunderstandings of its function, this Committee recommends that its official title be changed to "Council Committee on Procedures and Policies" and, -- that its membership commencing with the 1971 Council reorganization be limited to three regular members.

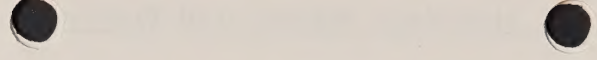
4. This Committee recommends that the Council adopt a policy of requiring the City Manager to completely perform his investigatory responsibilities and render requested reports to the Council irrespective of whether some other agency of government is investigating or contemplating action on the same citizen complaint.

In view of the following analysis, this Committee recommends that the Council adopt a practice of not requiring the City Manager to reveal even to the Council his findings or decisions in those cases wherein:

- (1) he has concluded that no disciplinary action is indicated, or
- (2) he has decided that disciplinary action of less than discharge is indicated, and
- (3) there is a pending investigation or action by another governmental agency which may lead to criminal prosecution.

The reason for this is to avoid possible prejudicial pretrial publicity. In these situations his report to the Council may simply be that (3) above is a fact, he has concluded his investigation, has made his determination regarding indicated action and will more fully advise the Council at the conclusion of the other proceedings.

The Committee recognizes that there is a possibility that other agencies may conclude from this policy position that they must intervene because we are not carrying out our proper responsibilities. However, it should be noted that if other agencies will restrain their enthusiasm for a reasonable time, the entire Berkeley redress procedure can be concluded without delay.



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Existing Berkeley police regulations require officers to submit reports of on-duty incidents when requested to do so by their superior officers. Failure or refusal to submit such a report, even if it involves material detrimental to the personal interest of the officer, may be punished by dismissal. As a result of these regulations, over the years there has been an extraordinarily high degree of candid cooperation from officers in submitting such reports.

On the other hand, the U. S. Constitution guarantees that no person may be compelled to be a witness against himself; i.e. self-incrimination. Of course, this guarantee also applies to police officers.

In view of the above, the City Manager feels that it would be unfair to the individual police officer to force him under threat of dismissal to give a report which may contain material detrimental to himself, contrary to the constitutional guarantee, and then for the City to release that information in a manner wherein it may be used by some other agency of government against the officer.

There is obvious merit to this position. The usual reason for requesting the reports from the officer is to assist the City Manager in determining whether any internal discipline or correction is justified.

It is reasonable to believe that if these regulations are rescinded, officers' reports, when given, will be less candid than at present; and further that there will be greater reliance upon the 5th Amendment.

The City Attorney questions the legal enforceability of a rule requiring discipline of an employee (usually dismissal) where the employee refuses to give the requested report after he has been advised of his right to remain silent pursuant to the Constitutional guarantee. The moral and legal question presented is whether a right is really a right if one may be punished for exercising it? (i.e. loss of his job).

An argument to the contrary is that a public employee (such as a Police Officer) is accorded certain powers and responsibilities as a public trust; that he has no right to those powers except as is determined by that segment of the public that gave them to him in the first place; that as a condition of retaining those powers, he may properly be required to give information that may or may not be personally detrimental; that the Constitutional guarantee against compulsory self-incrimination is applicable only to an existing or potential criminal proceeding, and one's absolute right not to be subjected to punishment in such a criminal proceeding as a result of compulsory disclosure or refusal to disclose.

An alternative policy position could be that in any situation wherein if the charge brought against the officer were found to be true, he would be subject to criminal prosecution, he should be admonished as to all of his rights and not be subjected to any internal discipline for refusal to give a statement. The Committee believes that the adoption of this policy would be detrimental to the good of attracting and retaining the highest quality of available City employee.





Report on Pending Cases

The Committee has the following cases pending and hereby reports thereon:

1. The "Free Clinic" case (Dr. Raymond Jennings) wherein the basic allegations are that several members of the Police Department used force where none was justified, and used more force than was justified where the use of some force could have been indicated.

The Committee heard testimony on three different occasions from several witnesses, police and non-police. It also reviewed the written complaint and the Police Department report.

The Committee concludes that existing State law that an officer use only reasonably necessary force covers the policy question.

We withhold comment on whether excessive force was or was not used on the basis that the declaration of that determination is not a proper function of this Committee. Two members of the Committee (Sweeney, Dellums) feel that declaration of the determination in a personnel session as a part of a review of the performance of the City Manager, is a proper function of this Committee.

The complainants have legal counsel, monetary claims of approximately \$1,000,000 have been filed against the City and it is clear that the complainants are aware of their right to seek a criminal complaint from the District Attorney and/or to pursue their civil complaint for money damages in the courts.

Their remedies within the present City structure have been exhausted. Two questions concerning police tactics during civil disturbance have been raised by this complaint. They are concerned with clarification of the circumstances under which it is appropriate for an officer to strike someone with a baton who is:

- (1) occupying the porch or steps of a place which he is privileged to occupy, at a time when some part of a riot situation exists in the area, and that person refuses to leave the porch or steps and go inside the building upon police orders, and
- (2) obeying an officer's order to disperse, but is not moving as rapidly as the officer desires.

The Committee recommends that the Council require the City Manager to report to the Council upon these tactical questions. The Council should then take appropriate action, if any.

Mr. Alper, an attorney in the Free Clinic matter, stated that no "Clinic" witnesses had been contacted by the Police Department investigator. The Police report names eleven civilians and twelve policemen who were interviewed. Of those 11 civilians, only Dr. Russ Nickels testified before the Committee. Rev. Raymond Jennings, the complainant, apparently was not interviewed by the investigator.





The Police representative (Lt. Crooke) stated that frequently he will not interview a witness when the Department already has his statement.

The Committee recommends adoption of a policy of always having the investigator interview the complainant if possible, and also interview all other available witnesses.

Mr. Paul L. Reim, an attorney, stated that many witnesses had gone to the Police Department to give statements but that there had been a refusal to take their statements; instead, they were told that someone would interview them later.

The Committee recommends that arrangements be made for the receipt of all witnesses' statements at the earliest practicable time even if it is necessary to use tape dictating machines because of the immediate unavailability of the proper officer to take the statement.

It was further alleged by Mr. Rein that while the Police Department was still supposedly in the process of investigating the incident, a representative of the Police Department gave a public statement before a group of members of the Alameda-Contra Costa County Medical Association as to the Police Department's findings in the matter.

The Police Department representative stated that he gave the statement at the request of the group and prefaced his remarks with comment that he was only giving one officer's version of the incident; that the investigation was not complete.

This Committee recommends that a general policy be adhered to of the investigating agency giving out no value judgment public statements of the alleged facts of an incident which is still under investigation by the Department.

2. The KPFA case, (Al Silbowitz). The allegation basically is that in civil disturbance situations and in some non-civil disturbance situations, employees of this radio station and other not-dressed-so-straight members of the press have been physically roughed up by Police and without sufficient provocation have had their press passes summarily removed by a Police Officer; that in two separate incidents the same Police Officer was involved; that the Police investigation did not include interviews with some key available witnesses; that a report of the decision was not provided until 11 months after the complaint was filed and then only upon initiation of the complainant, and that only the bare decision of "complaint not sustained" was given.

This Committee concludes that the policy regarding the use of force by Police is already clearly established and does not require modification.

The Committee further concludes that the policy of non-discrimination in treatment on the basis of dress or political views is likewise well established. Declaration of the determination of whether those policies were violated in these situations is not a proper function of this Committee.

We already have a policy requiring that the complainant be advised of the results of his complaint at the earliest practicable time.





We recommend that that policy be amended to include in the written report to the complainant the names of witnesses interviewed and a statement of findings of fact

e.g. "we find that the officer did not strike X, or that he did strike X but was justified in doing so and that he only used that force which was reasonably necessary, or that he used more force than was reasonably necessary" etc.

3. The Jimmy Harrold Matter, wherein the complaint is that the Police investigation of a homicide erroneously concluded that the homicide was justified.

This Committee interviewed witnesses and reviewed the Police file.

We concluded that it is not our function to make the determination requested by the complainant; that the existing policy of submitting such evidence to the County District Attorney for the D.A.'s determination of whether to issue a criminal complaint is a reasonable policy.

4. Myrna Stickling Matter. This employee was a Meter Maid who was injured on the job and determined to be partially disabled by the Industrial Accident Commission. Pending her disability determination she was assigned to other, lower ranking, tasks for which she was not deemed wholly qualified. She continued to receive the higher salary, however. When her disability was finally determined, she was terminated from all City employment because of her inability to perform the job of Meter Maid.

She contends through her union agent, that the City is morally obligated to provide her with a job.

The Committee's view is that people in this category should be permitted and encouraged to take qualifying examinations for other available positions with the City but that the City is not morally obligated to make work for them.

The Committee recommends that the subject matter be referred to the Personnel Board for its recommendation on whether people in this category should be given some preferential treatment in taking qualifying examinations for other City employment.

5. Nancy Chestnut Matter. Miss Chestnut was refused permission by the Personnel Department to file an application for a Mechanic's Helper examination several days after the publicized closing date for the receipt of applications for the position.

She contended that she should be permitted to file a late application because City policies and practices discourage women from applying for certain positions.

The Committee recommends no change in the policy that employment applications be timely filed.

~~The Committee recommends that the City Manager be requested to review all City employment policies and practices with appropriate department heads to insure that those policies and practices do not reflect discrimination against any person because of the sex of the applicant.~~

The following table shows the results of the survey conducted in the year 1995. The data is presented in a tabular form for easy reference.

The table is divided into two main sections: the first section contains the names of the respondents, and the second section contains the details of their responses.

The first section of the table is headed 'Respondent Name' and the second section is headed 'Response Details'.

The table is organized in a way that allows for a clear comparison of the responses of different respondents.

The data shows that the majority of respondents have a positive view of the current situation, with only a small number of respondents expressing concerns.

The results of the survey indicate that there is a general sense of optimism among the respondents, which is reflected in their positive responses to the various questions asked.

The survey also revealed that there are some areas where improvement is needed, and these areas are highlighted in the table.

The findings of the survey are summarized in the following table, which provides a clear overview of the key results.

The table shows that the respondents are generally satisfied with the current state of affairs, and they are confident that the future will be bright.

The survey also identified some specific areas for improvement, and these are discussed in detail in the following section.

The results of the survey are presented in a clear and concise manner, making it easy for the reader to understand the findings.

The survey was conducted in a fair and unbiased manner, and the results are reliable and valid.

The survey provides a valuable insight into the views and opinions of the respondents, and it is a useful tool for decision-making.



NOTES

1. There is not unanimous Committee agreement on all parts of this report.
2. Councilman Dellums did not participate in any of the hearings reported here.
3. Councilman Price served as an alternate member of the Committee in the hearings of the "Free Clinic" case at the request of the Committee Chairman.

Respectfully submitted,

Wilmont Sweeney, Chairman  
John K. De Bonis  
Ronald V. Dellums  
Tom McLaren

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